HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 26957 OF 1995

Dated: 20th September, 2006

Between:
Marri Venkatamma and others

… Petitioners

And

Defence Estate Officer & Competent
Authority (ULC), Secunderabad Cantonment
and another.

…Respondents.

ORDER:

This writ petition has been filed questioning the proceedings No.ULC/1/533/1995/3, dated 21.6.1995 issued by the Defence Estate Officer and the Competent Authority, Urban Land Ceiling, Secunderabad Cantonment addressed to the Special Deputy Collector, Land Acquisition, Hyderabad, the second respondent herein.

The facts, in brief, which are necessary for disposal of the writ petition are as follows:

It is stated in the affidavit filed in support of the writ petition that one Mr.Ahmed Ghori was the inamdar of the land covered by Survey No. 28 admeasuring Ac.21.00 situated at Bowenpally village of Secunderabad Mandal in Hyderabad District. He leased out the said land in favour of one Marri Veera Reddy, who was the husband of the first petitioner herein, father of petitioner No.2 and grandfather of petitioners 3 to 6. Out of the above extent of land, Ac.15.38 guntas of land was notified for acquisition for public purpose i.e. for E.M.E. School Driving Track, Secunderabad, under Section 4 (1) of the Land Acquisition Act, which was published in A.P. Gazette No. 39-A, dated 11.10.1973. But, however, it is the case of the petitioners that possession was taken to an extent of Ac.16.12 guntas, though only Ac.15.38 guntas was notified. With regard to the acquired land, award was passed by the Land Acquisition Officer and as there was a dispute with regard to apportionment of compensation, the matter was referred to I Additional Judge, City Civil Court, Hyderabad, and, on entering into

compromise, compensation was paid as per the terms of the compromise. In respect of the remaining area of Ac.4.28 guntas, pursuant to the request made by the petitioners for grant of Occupancy Certificate under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, the Revenue Divisional Officer, Hyderabad had issued the Occupancy Certificate in favour of the petitioners vide proceedings No. B/3256/1994 dated 15.10.1994. Out of the said area of Ac.4.28 guntas, an extent of Ac.3.00 was sought to be acquired for the purpose of Railway Broad-guage line and notification under Section 4(1) of the Land Acquisition Act was published in the A.P. Gazette No. 78 Extraordinary dated 8.8.1994 and declaration under Section 6 of the Land Acquisition Act was also published in A.P. Gazette No.81, Part-I Extraordinary dated 17.8.1994. Under the said notification, the heirs of Ahmed Ghori were shown as owners of the property. The petitioners claiming to be Occupancy Certificate holders in respect of the above said land under the Andhra Pradesh (Telangana Area) Inams Abolition Act, have filed claim petition claiming compensation before the second respondent – Land Acquisition Officer, with regard to said three acres of land. On the other hand, there is also rival claim by the respondents 3 to 17 herein who are claiming to be the heirs of original Inamdar and are also claiming compensation for the said land. On claims being made pursuant to the notifications issued under Sections 4 and 6 of the Land Acquisition Act, as the said land falls in the urban area and within the limits of Secunderabad Cantonment, the second respondent, Special Deputy Collector, addressed a letter to the Defence Estate Officer, who is the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 for clearance under the Urban Land Ceiling Act. In response to the said letter, the first respondent by impugned proceedings dated 21.6.1995 stated that

the land covered by Survey No. 28/1 of Bowenpally village falls in GLR Sy.No. 507 of Secunderabad Cantonment and, is classified as "A-I" Defence owned land.

It is the case of the petitioners that the land covered by Survey No.28 was inam land and by virtue of the continuous possession of their predecessors, they were already granted Occupancy Certificate as per the provisions of the Inams Abolition Act, 1955, and, as such, the first respondent has no authority to address letter to the second respondent by impugned letter stating that subject land is the defence owned land classified as "A-I". It is the case of the petitioners that said piece of land is left over land in Survey No. 28 after acquisition to an extent of Ac.15.28 gts of land in the year 1973 and this extent of Ac.3.00 was never notified earlier for any defence purposes. In that view of the matter, the petitioners cannot be deprived of their rights by virtue of the letter addressed by the first respondent.

In the counter affidavit filed on behalf of the first respondent, it is stated that as per the General Land Register of the Secunderabad Cantonment, the land comprising Ac.755.48 of G.L.R Sy. No. 507 of Secunderabad Cantonment is classified as A-I land and placed under the management of QMG and was handed-over to the Military authorities in 1926 and the said piece of land is within the cantonment limits. While admitting the acquisition to an extent of Ac.15.38 guntas, it is stated that the said land was outside the land covered by GLR Survey No. 507 and was abutting the subject land. It is stated that the area of Ac.4.28 gts claimed by the petitioners to be in Survey No.28/1, falls within the cantonment limits and the same was already in possession of the Government of India and was being used for defence purposes as Rifle Range area. With regard to the proceedings initiated before the Revenue Divisional

Officer under the provisions of the Inams Abolition Act, it is stated that the first respondent is not having any knowledge about the said proceedings. Precisely, it is the case of the first respondent that as much as the said land is already in occupation of the first respondent, the question of acquiring the land or paying compensation to the petitioners does not arise.

Separate counter affidavit is filed on behalf of the second respondent, wherein, it is stated that in respect of the land covered by Survey No.28 admeasuring about 21 acres, the name of Ahmed Ghori is recorded in the revenue records as the pattadar of the said land. It is stated that out of the remaining extent of land, after acquisition of Ac.15.38 guntas for the Rifle Range, an extent of Ac.3.00 was notified under Section 4(1) of the Land Acquisition Act, on the requisition sent by the railway authorities. With regard to further steps as to publication in the newspapers, it is stated that as much as the said land is within the limits of Hyderabad urban agglomeration and covered by cantonment, the first respondent was addressed for clearance under Urban Land Ceiling Act and in response to the said letter addressed by the second respondent, the impugned letter was issued by the first respondent. But, however, it is further stated that pursuant to the notifications issued under the Land Acquisition Act, the award enquiry is in advanced stage and steps are being taken to pass the award.

Heard Shri A. Pulla Reddy, learned counsel for the petitioners, learned Assistant Solicitor-General of India, for the first respondent, learned Government Pleader for second respondent, and, Sri Srinivas for respondents 3 to 7.

Shri A.Pulla Reddy, learned counsel appearing for the petitioners submits that, absolutely, there is no basis for the first respondent to dispute the rights of the petitioners over an extent of Ac.3.00, which is already notified. It is submitted that after the

acquisition at the first instance in the year 1973 acquiring the land to an extent of Ac.15.38 gts., at no other point of time, the land covered by Survey No.28 was notified so as to claim the said land as defence owned land. It is further submitted that by mere entry, which is alleged to have been made by the first respondent without any authority of law, the petitioners cannot be deprived of their property, otherwise than by due process of law.

On the other hand, it is submitted by the learned counsel appearing for the respondents 1 and 2 that as much as there is a dispute with regard to title and possession of the property, the petitioners cannot agitate their rights in this petition filed under Article 226 of the Constitution of India. It is submitted by the learned counsel for the first respondent that to the extent of Ac.15.38 guntas, which was acquired on an earlier occasion, it was outside the limits of cantonment, but, so far as this land is concerned, the same is in possession of the cantonment right from the year 1926 and is recorded, as such, in the General Land Register maintained by the first respondent. Further, the learned Government Pleader appearing for second respondent – Land Acquisition officer, submitted that in respect of the entire extent of land, one Mr. Ahmed Ghori was shown as pattadar of the land, as per the revenue records. In that view of the matter, the land was notified and subsequently, possession was taken for public purpose i.e. doubling railway line. It is further submitted that as much as the writ petition is pending before this court, no further steps have been taken for passing of the award.

It is submitted by Shri Srinivas, learned counsel appearing for the impleaded respondents that as against the grant of Occupancy Certificates, the respondents have carried the matter in appeal before the appellate authority under the Inams Abolition Act and

such an appeal is pending consideration. Therefore, the impleaded respondents being the heirs of inamdar, are alone entitled for compensation.

What is borne out from the above submissions is that the dispute is with regard to title and ownership of the land to the extent of Ac.3.00, which is subject matter of notification dated 17.5.1994 under Section 4(1) of the Land Acquisition Act and declaration dated 18.5.1994 under Section 6 of the Act. It is the claim of the petitioners that they are the holders of Occupancy Certificate under the provisions of Andhra Pradesh (Telangana Area) Inams Abolition Act, and, as such, they alone are entitled for award of compensation for the land acquired for public purpose. Whereas, it is the stand of the first respondent that the same was in possession of the cantonment right from the year 1926, and, in that view of the matter, the petitioners cannot claim any rights over the said land for award of compensation pursuant to the notifications issued under the Land Acquisition Act, for acquisition of the said land. On the other hand, it is the case of the respondents 3 to 17 that they are the heirs of Mr.Ahmed Ghori who is the pattadar of the subject land and their names were also shown in the notifications issued under the Land Acquisition Act for acquisition of land, and, therefore, they alone are entitled for the compensation in respect of the subject land under acquisition. According to the second respondent – Land Acquisition Officer, the land notified was part and parcel of Survey No.28, which was recorded in the name of Ahmed Ghori, who was original inamdar of the land in question. Though in the impugned proceedings issued by the first respondent in response to the letter of second respondent it is stated that the land belongs to Defence as per the entries made in the GLR register, but, the fact remains that the land is covered by notifications under the Land Acquisition Act, pursuant to which, it is stated that possession was taken-over

for public purpose of doubling railway line.

In normal course, petitioners should have been directed to approach the civil court to establish their title and possession, but having regard to the fact that the land is already notified and proceedings are pending, it is for the second respondent – Land Acquisition Officer to determine the rights of the parties while deciding the claim for compensation under the Land Acquisition Act. Though in the impugned proceedings, the first respondent has stated that the subject land belongs to defence, but, such a recital cannot determine the right to receive the compensation in respect of the property notified. Though the land was notified as early as in the year 1994, but, having regard to the fact that possession was already taken, the statutory restrictions for passing the award as contemplated under Section 11-A of the Land Acquisition Act will not come into picture. In **Satendra Prasad Jain v. State of U.P.**[1], the Honourable Supreme Court with regard to applicability of the provisions of Section 11-A of the Land Acquisition Act where the land stood vested in the Government, held thus:

> " The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner. Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation."

Further, the second respondent, in the counter affidavit, also stated

that the award enquiry is at the advanced stage. But, however, after instructions, it is reported by the learned Government Pleader that the award was not passed in view of the fact that the writ petition is pending before this Court. However, as there are no orders by this court staying the award proceedings, the second respondent ought to have passed award in normal course.

As the award proceedings with regard to the land admeasuring Ac.3.00, which is in dispute, are pending before the second respondent pursuant to the notifications issued under the Land Acquisition Act, I deem it appropriate to dispose of the writ petition directing the second respondent to pass award under the provisions of the Land Acquisition Act with reference to notification dated 17.5.1994 issued under Section 4(1) of the Act and consequential declaration dated 18.5.1994 under Section 6 of the Act, by issuing notice to all concerned including the requisition-authority. It is also made clear that this court is not expressing any opinion on the merits of the claim of either the petitioners, or, respondents 3 to 17 or the first respondent i.e. Defence Estate Officer, who is claiming the land to be of the Defence Department right from the year 1926.

As the notification and the declaration under Sections 4 and 6 of the Land Acquisition Act are issued as early as in 1994, the second respondent shall pass award within a period of three months from today. It is open for the parties to lead such evidence to establish their right to receive the compensation.

The writ petition is disposed of accordingly. No costs.

20--9—2006 **R.SUBHASH REDDY, J.**

VR

[1] AIR 1993 SC 2517